

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 819 of 1996

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE G.D.KAMAT and
MR.JUSTICE C.K.THAKKER

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

AKBARALI KASAMALI SAIYED

Versus

STATE OF GUJARAT

Appearance:

Shri J.B.Dastur, Advocate for the Petitioner.

Shri Dhaval Dave, Add.PP for the State.

CORAM: G.D.KAMAT C.J. & C.K.THAKKER J.
(26.8.1996)

ORAL JUDGMENT:

Rule. Mr. Dhaval Dave, learned AGP waives service. By consent to be heard forthwith.

The petitioner is a life convict having been sentenced to suffer imprisonment for life in Sessions

Case No. 56 of 1979 by order dt. 17th March 1979. In the present petition, the petitioner challenges the vires of Rule 4 (10) of the Prisons (Bombay Parole and Furlough) Rules, 1959. It appears that after completing about 10 years of substantive imprisonment the petitioner asked for his release on Furlough. Respondent no.2 by order dt. 23rd January 1996 rejected Furlough on the ground that the petitioner had committed an offence under Sec.224 of the Indian Penal Code and awarded sentence of six months imprisonment.

It appears that no sooner the petitioner was tried, convicted and sentence awarded in Sessions Case No. 57 of 1979, he escaped from the lawful custody of the police while being taken to jail on 18th March 1979. The petitioner, however, voluntarily surrendered before the authorities sometime on 22nd October 1987 and that his how he was tried for an offence under Sec.224 of the Indian Penal Code by JMFC Botad and sentenced to six months imprisonment in the year 1988. The fact remains that once the petitioner surrendered on 22nd October 1987, the petitioner is incarcerated in Central Jail at Baroda. In our view, it is not necessary to go into constitutional validity of Sec.4(10) of the Prisons (Bombay Parole and Furlough) Rules, 1959 in the facts and circumstances of this case. We have ascertained from the learned Additional Public Prosecutor about the conduct of the petitioner in jail and we are told that there is nothing adverse against the petitioner so far as his conduct is concerned. Having regard to the fact that the petitioner has been in jail since nearly 8 years once he surrendered in 1987 and about one year as undertrial prisoner, we do not think that there is reason not to grant Furlough to the petitioner merely on the ground that he had escaped from the lawful custody no sooner he had been convicted and sentenced. We however, do not choose to exercise that authority ourselves and direct the respondent no.2 to consider his application afresh without being influenced by aforementioned Rule 4(10) of Rules, 1959 and taking into consideration his conduct in jail. The respondent no.2 to decide on the application of the petitioner within three weeks from the receipt of the writ of this court. We make it clear that all the contentions are left open so far as the petitioner is concerned.

The petition is allowed and rule is made absolute to the extent indicated with no order as to costs.

Dt. 26.8.1996. (G.D.KAMAT C.J.)

(C.K.THAKKER J.)
